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Supreme Court, U.S.
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In The

Supreme Court of the United States

Steven B. Lichtig – Petitioner

Vs.

State of California Et Al. - Respondent

Petition For Writ of Certiorari
To the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

I. Does the Judgment made by the California Supreme court conform to the existing standards to a person's Constitutional rights to Due Process and protection for their general welfare?

II. Does the Judgment made by the Supreme Court of California conform to existing laws regarding fraudulent concealment and confidential relationships, delayed discovery, incapacitation, and resolving any doubt in favor of the Applicant?

List of Parties

All parties Appear in the caption of the case on the cover page.

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In the

Supreme Court Of The United States

Steven B. Lichtig
Petitioner,
v.
State of California et. al.
Respondents

Petition for a Writ of Certiorari to the Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of California entered in this case

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is unpublished
The opinion of the State Court of Appeals appears at Appendix A and is unpublished

JURISDICTION

The Supreme Court of California denied review on May 19, 1999.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment 14 Sections 1:

Citizens of the United States all persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States, and of the State where in they reside. No state shall make of enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law. Nor deny any person within its jurisdiction the equal protection of law.

STATEMENT OF THE CASE

This is a valid and legally sound case. This case meets the rigorous standards for review of this court. This case involves issues of the utmost urgency and importance and must not be overlooked by this court. This court is asked to review a judgment, which is in conflict with other courts of regarding the same important issues. It has so far departed from the usual course of judicial proceedings that it would be considered prejudicial per se. Therefore, it is within the jurisdiction of this court to intervene and, insure constitutional rights. Also, that important aspects of the law are applied uniformly.

This case arose while MR. Lichtig was attending California State university San Luis Obispo. He was enrolled in a Masters degree program in counseling and guidance. This case has special circumstances, which include a confidential relationship, high standard of care, special skills and training and knowledge and mandatory ethical guidelines. While participating in the counseling program, violations of these mandatory ethical guidelines occurred. Confidential information was obtained without permission. This violated ethical guidelines to inform a

person of any actions or techniques and for what purpose. Also, Mr. Lichtig was tampered with in a Harmful and malicious manner. This violated ethical guidelines to promote the growth and well-being of individuals. The Respondents breached their mandatory duties when they did not take sufficient precautions and prevent damages from occurring. Violations were concealed allowed to continue and become harmful. Mr.Lichtig attempted to resolve problems with the Respondents and fraudulent misrepresentations and intentional concealment occurred. Under the special circumstances of this case their behavior was outrageous and inhumane.

This case is an atrocity against a human being. These persons had special skills and knowledge to alleviate problems however, used their skills in a harmful and malicious manner to inflict distress and damages. As a result Mr. Lichtig has sustained irreparable harm and is at risk. He has had to sustain a difficult and inhumane situation for fifteen years and, the conflict has yet to be properly resolved. Therefore, this case involves an urgent issue of humanity. It is required to report violations of this nature and, jurisdiction of the courts is mandatory. Mr. Lichtig is at risk from harmful and malicious misconduct. He pleaded his constitutional rights to protection for his general welfare. This could require injunctive actions by the court.

This case is straightforward situation of duty owed, breach of that duty and damages resulting from that breach. This case also involves a late claim. The late claim is valid and, legally sound. It was filed for legally acceptable reasons. Also, supporting the late claim are the facts that a confidential relationship existed and fraudulent concealment occurred. Therefore, the time limitations should be tolled for the period of fraud and concealment.

MR. Lichtig filed a tort claim with the /State Board of Control. This claim was denied. Then MR. Lichtig filed a complaint with the Superior court of California stating several causes of action: General negligence, Fraud, intentional infliction of emotional distress, intentional interference with contractual relations, breach of covenant of good faith and fair dealing, invasion of privacy, and defamation. Also, he filed a valid late claim for legally acceptable reasons as specified in government code 911.6.

The Respondents filed a demurrer on grounds of statute of limitations. However, MR. Lichtig was unable to attend the hearing and present opposition. Subsequently, the demurrer was sustained. MR. Lichtig filed a motion to have the dismissal set aside on grounds he was not given his constitutional rights to due process, and he was not informed of the hearing. If MR. Lichtig was present at the hearing he could have saved his case from dismissal. He also pleaded he was at risk and sought his constitutional rights of protection for his general welfare and, to have the conflict resolved in a proper manner. The motion was denied.

MR. Lichtig then filed a motion for reconsideration. He pleaded that he stated the elements of estopple in lay terms previously. He relied on the courts and should not be prejudiced for using legal terminology in a timely manner. The motion was denied.

MR. Lichtig then filed a timely notice of appeal. HE filed his appeal on grounds: the court abused their discretion when they dismissed the case, without Mr. Lichtig having a fair hearing. MR. Lichtig showed he could save his case from dismissal and, the case was not barred by the Tort Claims Act. This prejudiced Mr. Lichtig and caused a miscarriage of justice to occur. Also, the facts and evidence did not support

the judgment made by the court. The demurrer was sustained erroneously when it stated facts sufficient to constitute a cause of action. Also, Mr. Lichtig brought attention to the merits of this case. He was at risk and, the conflict must be resolved in a proper manner. Also, Mr. Lichtig stated that a confidential relationship existed and, fraud and, intentional concealment occurred. Therefore, the time limitations must be tolled for the period of fraud and concealment. If the time limitations were tolled in a proper manner, the Claim would not be barred by the time limitations. Also, presented in this appeal: was the doubt had overwhelmingly prevailed by preponderance in favor of Mr. Lichtig. Therefore, any doubt should be resolved in favor of the applicant. Particularly, in unrefuted claims.

The Appeal was denied. The appeals court stated that the case did not involve a delayed discovery or mental incapacitation.

Mr. Lichtig filed a Petition for rehearing on grounds the Appeals court had misinterpreted the facts of the case. This prejudiced Mr. Lichtig and a miscarriage of justice occurred. If the facts were interpreted correctly, they would support the theories of incapacitation and delayed discovery. In the Appeal Court opinion they stated: in the petition and complaint MR. Lichtig stated that "the violations were apparent" therefore, the case did not involve a delayed discovery. Mr. Lichtig explained in the Petition for Rehearing that when he stated the violations were "apparent" It was meant to convey that the violations should have been apparent to the Respondents. It was meant to show a breach of duty and, the Respondents should have taken precautions and prevented injury.

Also, he stated the court misinterpreted the statements that MR. Lichtig " he was dealing with the states violations on a daily basis" , "daily living was more difficult," "life was altered and damaged", The Appeals court stated that these statements showed that Mr. Lichtig was coping with the violations and, was not mentally incapacitated at any time. Mr. Lichtig stated in (APR) that these statements he had to "deal with violations..." was meant to convey that having to deal with the violations had a damaging and debilitating effect. Mr. Lichtig clearly stated violations were concealed and, he was being directed in a fraudulent manner. This would also cause any mental incapacitation and, make him unable to file a timely claim. Mr. Lichtig stated to the court that they had overlooked the special circumstances of the case. A confidential relationship existed and, fraud and intentional concealment occurred. Therefore, the time limitations should be tolled for the period of fraud and concealment.

Mr. Lichtig also stated that he was at risk. Jurisdiction of the courts with proper due process would insure his welfare and, resolve these problems in a proper manner. The petition was denied.

Mr. Lichtig then filed a timely petition for Review with the Supreme Court of California. Mr. Lichtig presented to the court the issue of whether the appeals court judgment conformed to existing standards of a Person's constitutional right to due process and rights to protection for their general welfare. He stated that there was a serious conflict which, has put him at risk and, must be resolved in a proper manner.

He also presented the question of whether the judgment conforms to existing laws regarding fraudulent concealment, confidential relationships and delayed discovery. Also, did

misinterpretation of facts supporting these theories present a question of law and, cause a miscarriage of justice to occur. Mr. Lichtig also stated the doubt had prevailed by preponderance in his favor. Also, with the urgent issues of humanity and, violations of mandatory ethical guidelines, the doubt was overwhelmingly in his favor. Also, the urgent issues of humanity would have precedence. The court denied review.

Mr. Lichtig is representing himself In Pro Per. He has made a mistake in procedure and, commenced with the civil action before prosecuting the Petition for Relief From Claims Statute. The Hearing for the Petition is a prerequisite for filing and prosecuting a civil action against a government entity. Mr. Lichtig relied on the courts. While Mr. Lichtig was prosecuting this case he was summoned by the courts to explain why the Petition For Relief from claims Statute should not be dismissed for failure to prosecute. It was at this time Mr. Lichtig realized the mistake in procedure. The mistake in procedure has caused some confusion and, a miscarriage of justice occurred. The Petition was filed under different case numbers therefor, was not available to the Judge who presided in the trial court. Therefor, the Judge could not review the case in a proper manner. Mr. Lichtig relied on the courts and the case proceeded in this manner. Mr. Lichtig wanted to show diligence in prosecuting this claim in a proper manner. He did not want to be prejudiced by this error in procedure. The Petition was dismissed. Mr. Lichtig filed a motion to have the dismissal set aside. This motion denied. Mr. Lichtig then filed a timely notice of Appeal. This motion was denied.

This mistake in procedure presents the federal question of being heard in a meaningful and proper manner and, substantial rights of lay litigants.

Mr. Lichtig has relied upon the courts. Therefore, he will pursue this Petition as his final chance to achieve justice in this case. However, he did show diligence in attempting to prosecute the case in a proper manner and, the issues raised in those proceedings should be considered.

This Case Meets the Rigorous Standards For Review In The U.S. Supreme Court

This case meets the rigorous standards of review from this court. The issues in this case present questions of important national precedence. It involves a person's constitutional rights to due process and constitutional rights to protection for their general welfare. The decision of this case is erroneous, and a miscarriage of justice has occurred. The decision is in conflict with the decisions of other Appellate courts and the constitution. The nature of this case shows a serious conflict, which must be resolved in a proper manner. This case presents harmful and malicious misconduct, and violations of mandatory ethical guidelines. However, the proceedings do not reflect the serious nature of this case. Therefore, Mr. Lichtig was denied his constitutional rights to due process. Also, his constitutional right to protection from the courts for his welfare. A fundamental value of the constitution and, of society is to have conflicts resolved in a proper manner. Particularly, conflicts involving harmful and malicious misconduct and violations of mandatory ethical guidelines. Also having sufficient procedural protections for the nature of a situation. This court must insure these constitutional rights. Also, intervene to insure existing laws are applied uniformly to this case.

Judgments of U.S Supreme Court Support Review

The constitution and, several reviews of U.S Supreme Court support the issue of due Process in this case. The urgent issue of humanity supports the U.S Supreme Court decisions to determine the requirements for due process. They have stated in their review that we must look not to the weight but to the nature of the interest at stake Morrisey v. Brewer 482 U.S. 471

As a result of violations, Mr. Lichtig could not complete his degree and plans for the future. His life was altered and damages occurred. Time that should have been spent building a career, pursuing interests and hobbies, having a normal life, was spent attempting to resolve this conflict or being damaged by violations. As a result he was deprived liberty. The damages incurred in this case would qualify as being deprived liberty. The U.S Supreme court stated: that without doubt it [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children Meyer v. Nebraska 262 U.S. 390 399.

Also, due process is flexible and calls for such procedural protections as the particular situation demands. Goldberg v. Kelly 397 U.S. 254 (1970). This case and, the urgent issue of humanity would demand sufficient due process. This case involves violations of mandatory ethical guidelines. Therefore, jurisdiction of the courts is mandatory Ethical Principals of Psychologist Adopted by the American Psychological Ass. This fact would be sufficient to satisfy any requisites for due process. Also, the subsequent proceedings have shown that laws have not been uniformly applied and constitutional rights have been denied.

Also supporting review: Sovereign immunity is limited and a government entity is liable as if a private person would be liable. Indian Towing v. United States 350 U.S 61.

Decision is in Conflict with Existing Laws

The nature of these proceedings showed the decision of the court to be in conflict with decisions of another appellate court. This court must supervise to insure laws are applied uniformly.

The facts of this case showed any doubt to be in favor of the applicant. The decision of the court conflicted with another Appellate courts. Case law has shown, that whenever possible cases be heard on their merits and, any doubt that exists should be resolved in favor of the applicant Viles v. The State of California (1967) 66 Cal 2d. 29 Particularly, in unrefuted claims.

Also, the special circumstances of this case involve a confidential relationship and fraudulent concealment occurred. Therefore, the time limitations should be tolled for the period of fraud and concealment. The decision of the court conflicted with other appellate courts. Case law Indicates that if the delay in commencing an action is induced by the conduct of the defendant he cannot avail himself of the defense of the statute of limitations (1955) Gaglione v. Coolidge 134 Cal App. 2d. 518. The importance of enforcing this law can be seen. If the defendant makes fraudulent misrepresentations or conceals cause of action from potential plaintiffs the limitations period for the action will be tolled for the period of concealment or

misrepresentation, such a defendant is estopped from benefiting from his or her improper actions. Stafford v. Shultz 42 C 2d.767.

Denial of Constitutional Rights to Due Process is Prejudicial Error Per Se

Mr. Lichtig established he could save his case from dismissal. Legally, he has prevailed by preponderance to have any doubt resolved in favor of the applicant. In addition, the nature of this case has shown an urgent issue of humanity. A human being has sustained irreparable harm and is at risk. They have had to sustain a difficult and inhumane situation for 15 years and, the conflict has yet to be resolved in a proper manner. It is apparent there is a serious conflict and, this case has met any requisites for due process. Therefore, denial of due process to resolve conflicts in a proper manner is detrimental to the values of humanity the constitution and the nation. It would be a substantial error and considered prejudicial per se.

Substantial Rights of Lay Litigants Must Be Recognized

Mr.Lichtig has represented himself In Pro Per in this case. He has acted accordingly shown diligence and, prosecuted this case in a sufficient manner. He has prevailed by preponderance and, should not be prejudiced by any confusion or errors in procedure. Mr. Lichtig has attempted to prosecute this case while these conflicts remain unresolved. He has been at diminished capacity. Also, the Respondents have not conformed to standards of conduct. Their conduct has shown they are suppressing evidence and obstructing Justice. Richardson v. Employers Liab. Ins Ass(1972) 25 Cal App 3d. 232,234

The mistake in procedure did cause confusion and, a miscarriage of justice to occur. This is evident in the trial proceeding when the Demurrer was sustained erroneously, when it stated facts sufficient to constitute a cause of action. In testing the legal sufficiency of a Demurrer the facts stating a valid late claim should also have been deemed true.

Therefore, there is a question of whether Mr. Lichtig has been heard in a meaningful and proper manner. Case law has supported the substantial rights of lay litigants:

> While the fact that that a layman litigant elects to represent himself does not relieve him of the duty of observing legal rules, the fact should be considered in determining whether in a situation where the trial court has the discretion to act, to relieve

the lay litigant of default that discretion should be exercised. Pete v. Henderson (1954) 124 Ca. 2d. 487.

REASONS FOR GRANTING PETITION

This case has met the rigorous standards for review of this court. Review of this case would uphold constitutional rights to due process: To be heard in a proper and meaningful manner. To have conflicts resolved in a proper manner and, have the proper procedural protections for the nature of the case. Granting review would insure constitutional rights for protection of ones general welfare. The decision entered in the courts has conflicted with decisions of other Appeals Courts on the same important matters. Granting Review would secure uniformity for important and existing laws.

Mr. Lichtig has presented a serious conflict. It involves harmful and malicious misconduct. Also, violations of mandatory ethical guidelines which, require mandatory

jurisdiction of the courts. He has sustained a difficult and inhumane situation the conflict has yet to be resolved in a proper manner. There is an urgent and important issue of humanity. Mr. Lichtig has sustained irreparable harm and is at risk. The court proceeding do not reflect the serious nature of the case. Therefore, granting review would insure sufficient due process for the serious nature of this case. The nature of this case requires proper review. Also, a confidential relationship exists and disclosure is mandatory. Also, discovery, a chance to present opposition, evidence, and a jury to decide questions of fact.

This case has importance beyond the parties involved. It would uphold ethical standards in the counseling profession and prevent the nation and society from being damaged. Also it would uphold essential values to the constitution, humanity and the nation to have conflicts resolved in a proper manner. Also, precedence for students at these institutions to have rights of due process. Also, this case would be a precedent for substantial rights of lay litigants.

Mr. Lichtig has presented several compelling, urgent and important reasons for this court to grant review. This case has met the rigorous standards of review for this court. This case is an atrocity against a human being and presents an urgent issue of humanity. Violations of this nature must be resolved in a proper manner. There could not be any issues or case, which would be more compelling, important or urgent to have review granted. Therefore, as the court of last resort this case must not be overlooked and certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Steven B. Lichtig

Steven B.Lichtig In Pro Per

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Date: Aug 17, 1997

Appendix A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

STEVEN B. LICHTIG, Plaintiff and Appellant.
v.
STATE OF CALIFORNIA. Defendant and Respondent

B122764

(Super. Ct.No.SC049131)

FILED MAR 1,1999

APPEAL from an order of the Superior Court of Los Angeles County, Daniel A Curry, Judge Affirmed.

Steven B. Lichtig, in pro. Per. For Plaintiff and Appellant

Daniel E. Lungren and Bill Lockyer, Attorneys General, Margaret A. Rodda.
Senior Assistant Attorney General, Richard Rojo, Supervising Deputy Attorney General. And Glen Seretan. Deputy Attorney General for Defendant and Respondent.

In late 1997, plaintiff filed this action against the State of California, alleging that while a student in 1982 and 1983 he was mistreated by the faculty at California Polytechnic Institute, San Luis Obispo. The trial court dismissed the action finding that it was barred by the Tort Claims Act. (Gov. Code. &810 et seq)Plaintiff has appealed we affirm.

INTRODUCTION

"The purpose of the Tort Claims Act ...is to provide a public entity [with]

sufficient information to enable it to Adequately investigate claims and to settle them, if appropriate, without the expense of litigation... Submission of a claim to a public entity pursuant to [the act] is a condition precedent to a tort action and the failure to present the claim bars the action. "Paramount Unified School Dist. V. Teachers Assn of Paramount (1994) 26 Cal App 4th 1371, 1387, citations omitted.)

As a prerequisite to filing suit, the Tort Claims Act requires that a claim involving "injury to [a] person" be presented to the appropriate public entity no later than six months after accrual of the cause of action. (Gov. Code 911.2) 1. Claims against the State of California must be presented to the State Board of Control ("Board"). (915. Subd.(b). If the claim is not presented to the Board with in the six-month period, a claimant may file an application with the Board seeking leave to bring a late claim.

Such an application" shall be presented to the [Board]...within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim"(911.4 italics added.) For purposes of calculating the one-year period, " the time during which [the claimant is mentally incapacitated and does not have a guardian of a conservator of his person shall not be counted."(911.4 Subd(b) italics added

For purposed of calculating the one-year period , "the time during which [the claimant]is mentally incapacitated and does not have a guardian or a conservator of his person shall not be counted" (911.4, Subd.(b) italics added.)

1." Accrual" under the Tort Claims Act is the date on which the cause of action would have accrued for the purpose of commencing the statute of limitation in an action between private litigants (Gov. Code 901. unless otherwise indicated , all further statutory references are to the Government code.)

"The aboard shall grant the application where one or more of the following acre applicable(1) Failure to present the claim was through mistake inadvertence or surprise, excusable neglect and the public entity was not prejudiced in its defense of the claim by(1)
the failure to present the claim with [six months after its accrual]... (3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the [six-month period]
for the presentation of the claim and by reason of such disability failed to present a claim during such time"(911.6, subd.(b)(1),(3).)

If the Board denies the "late claim" application, the claimant may then petition the superior court for permission to file a civil action. The petition to the court must demonstrate that (1) the claimant submitted a "late claim" application to the board within the statutory period (i.e., within one year after the accrual of the claim, as extended by any period of mental incapacitation), and (2) the aboard denied the application. (946.6, subd. (c). If the claimant makes that initial showing, the superior court " shall relieve the petitioner from [failing to present a timely claim to the board if] one or more of the following is applicable: 91) the failure to present the claim [to the board] was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudice in the defense of the claim if the court relieves the petitioner from [the six-month filing deadline]. (3) The person who sustained the alleged injury,
damage or loss was physically or mentally incapacitated during all of the [six-month] period]

For the presentation of the claim[to the board] and by reason of that disability failed to present a claim during that time."(946.6, subd. (c) (1),(3).)

In sum, a personal injury claim against the state must be presented to the Board within six months of accrual in order to be timely. If the claimant misses the six-month deadline, he may apply to the board for leave to file a late claim. The application must be filed within one year after the accrual of the claim, excluding any time during which the claimant was mentally incapacitated. If the board denies the "late claim" application, the claimant many petition the superior court for permission to file a civil action. However, the court cannot grant the petition unless the claimant presented a 'late claim" application to the Board within the statutory period. If the claimant did not do so, a civil action is barred. (945.4)

BACKGROUND

In or about November 1997, plaintiff Steven Lichtig, acting in propria persona, filed this action against the state of California, alleging several causes of action arising out of his enrollment as a student at California Polytechnic Institute, San Luis Obispo.2. The complaint alleged:

"...MR. Lichtig was enrolled and participating in a [M]asters degreed program in counseling and Guidance. The field of Counseling Guidance has a specific code of ethics to protect persons participating in the counseling Program. Ethical Guidelines specify that persons be informed of any actions or techniques and for what purpose... Trust is established and built throughout the counseling program...

"While Mr. Lichtig was participating in the counseling program confidential information was obtained without permission. It was obtained in a 'hit and run manner' and as to conceal violations. Mr.Lichtig was not informed

information was obtained, would be obtained and for what purpose. There were occasions when Mr. Lichtig was questioned by two or more persons and collaborations were formed. Confidential information was used in a harmful and

2. The complaint contained causes of action for negligence, fraud, negligent and intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, Interference with contractual relations, defamation and invasion of privacy.
manner and for personal gain...

Mr. Lichtig was a new student in a field, which presents many occupational hazards and was already in a difficult situation. Having the violations occur in a [n] already difficult situation made the cause and effect more pronounced and confounded the situation into a serious dilemma. Mr. Lichtig was unable to continue his life in a normal manner and was dealing with more things than normally required in a counseling program...These problems were apparent and Cal Poly did not take proper or sufficient precautions to prevent damages from occurring...Finally, [Mr.Lichtig] Was able to write a letter to Cal Poly and inform them of what occurred, He received a letter, which stated there were no recollections, and no ethical violations occurred. However problems continued [and] were concealed and allowed to become harmful.

"...[T]he dangers of the cause and effect of violations occurring in the special circumstances of t he counseling program were imminent. Great amounts of time and energy were spent dealing with business that did not promote growth or well being."....."
"...Mr. Lichtig had to deal with violations from until the present time. He had 1983

to deal with them on a daily basis. This made daily living more difficult and damaged the quality of life... Time and energy spent to have a career and build financial security [were] spent dealing with violations. Mr.Lichtig lost wages from 1983 until the present time. Time and energy normally devoted to personal relationships and relatives [were] spent dealing with violations...Also, time normally spent pursuing interests and hobbies were spent dealing weigh violations. These things damaged the future of Mr. Lichtig..."

When the complaint was filed, Lichtig also filed a petition pursuant to the Tort Claims Act. The Petition alleged that Lichtig's claim was founded upon a cause of action for personal injuries which accrued on March 1982- March 1983 and continued and [is] ongoing
[Until] the present time." Lichtig asserted that the claim was not timely filed with the State Board of Control because of inadvertence and surprise. He also alleged that he had been mentally and physically incapacitated. According to the petition. Lichtig filed a 'late claim' application with the Board on March 20, 1997. The Board denied the application on April 17,1997, stating:"We have reviewed the claim and determined that the Board has no jurisdiction to accept the claim for consideration for the following reasons: Your claim was filed more than one year from the date of the incident that is the basis of the claim, and it is too late for the Board to consider an application to present a late claim."

In response to the complaint and petition, the state filed a demurrer and motion to dismiss, arguing that the action was barred by the Tort claims Act. Lichtig did not file an opposition. The matter was heard on January 21,1998. Lichtig did not appear at the hearing. The trial court sustained the demurrer without leave to amend and granted the motion to dismiss. In so doing, the trial court implicitly denied Lichtig's petition for relief from the claims filing

requirements of the Tort claims Act. An Order of dismissal was entered of February 6, 1998.

On February 11,1998, Lichtig filed a motion pursuant to section 473 of the Code of Civil Procedure, contending that the dismissal should be set aside because he did not receive notice of the demurrer or the motion to dismiss.3 The state opposed the motion on the ground that, even if Lichtig had received notice, he could not have raised a valid argument against dismissal. The state also offered evidence that the demurrer and the motion to strike had been served on Lichtig. On March 2, 1998, the trial court denied the motion to set aside the dismissal.

On March 12,1998, Lichtig filed a motion for reconsideration. He argued for the first time that the state was estopped from invoking the Tort Claims Act in seeking to dismiss the action. Lichtig explained that the facts supporting the estoppel argument " were not disclosed before for the reasons that MR. Lichtig is representing himself in Pr per. And is not a professional attorney... He had done more research on the case and discovered the section of estopple{sic} which was pertinent to this case." Lichtig cited not authority in this motion.

The state opposed the motion for reconsideration on the grounds that it was not based on new facts of law, nor had Lichtig adequately explained why he had failed to raise the estoppel argument earlier. On April 2, 1998, the trial court denied the motion stating, "There are no new facts or laws which are required by CCP 1008 in order to move for reconsideration" 4.

3 Section 473, subdivision (b), states: " The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect..."

On March 24, 1998 the state served Lichtig with a Notice of Entry of Order of Dismissal Lichtig filed a Timely Notice of Appeal

DISCUSSION

"A judgment or order of the trial court is presumed correct and denial of relief will be upheld unless Appellant shows a clear abuse of discretion and that there has been a miscarriage of justice... [the Tort Claims Act] provides the procedure whereby a party whose application for leave to present a late claim has been denied petition the court for relief from the provision of [section] 954.4 (prohibiting action against public entity in absence of presentation of claim)

Before the court may grant the petitioner's request for late claim relief the petitioner, must demonstrate by a preponderance of evidence that his application to the public entity for leave to file a late claim was presented within a reasonable time..."(Rojes v. Riverside General Hospital (1988)203 Cal App. 3d 1151,1162, overruled on other grounds in Passavanti v. Williams((1990) 225 Cal. App. 3d. 1602,1607-1608, citation omitted; accord, Bettencourt v. Los Rios Community College Dist.
(1986 42 Cal. 3d 270, 275-276.)

Here, in petitioning the trial court for relief from the claims filing deadline Lichtig acknowledged that his claim

4 Section 1008, subdivision (a), states: "When and application for an order has been make to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that make the order, to reconsider the matter and modify, amend, or revoke the prior order..."

[was] founded upon a cause of action for personal injuries which accrued of March 1`982 March 1983 and continued...5 A late "claim" application had to be filed with the Board within one year after the claim accrued (i.e. no later than March 1984), excluding any time during which Lichtig was mentally incapacitated. (See 9.11.4, subd. (b),946.6 subd. (c) As stated, Lichtig did not file such an application until March 1997- 13 years after the one-year period had expired. The question thus becomes whether Lichtig was mentally incapacitated for at least 13 years after March 1983. We agree with the trial courts implicit that he was not.

Even if we view the evidence most favorably to Lichtig, there is nothing to suggest that he was ever mentally incapacitated. ON the contrary, in the petition filed with the trial court, Lichtig stated that, during the 1980's he "he was dealing with the [state's]
Violations on a daily basis and "that he devoted great amounts of time and energy to deal with [the] violations." Lichtig further stated that as a result of the state's wrongdoing he "was unable to continue his life in a normal Manner "his daily living was more difficult"

5 Although Lichtig asserted that he was "unable to fully realize what [had][occurred" at California Polytechnic Institute, he nevertheless admitted that his "problems were apparent." Consequently, this case does not involve a " delayed discovery ":
situation.(See Cross v. Bonded Adjustment Bureau(1996) 48 Cal. App. 4th 266,280-281.) Indeed, the petition expressly alleged that the cause of action 'accrued no later than March 1983.

his "quality of life was damaged, and his life was "altered." If any thing, these statements indicate that Lichtig was coping with the situation, not that he was incapacitated. His preoccupation with the state's alleged violations cannot be equated with mental incapacitation. (See Rojos v. Riverside General Hospital supra 203 Cal. App. At p1163; Drumond v. County of Fresno (1987) 193 Cal.App.3d 1406, 1409; Lutz v. Tri- City Hospital (1986) 179 Cal. App.3d 807,811-812; Harrison v. County of Norte Del (1985) 168 Cal App. 3d. 1,9; Bennett v. City of Los Angeles (1970) 12 Cal. App. 3d 116,121)

Absent mental incapacitation, Lichtig had to file a ": late claim " application with the Board no later than March 1984 (i.e. one year after his claim accrued). He did not do so. It follows that the trial court was without jurisdiction to permit Lichtig to maintain a civil action. (Munoz v. State of California (1995) 33 Cal. App. 4th 1767.1779; Greyhound Lines, Inc. v. County of Santa Clara (1986) 187 Cal. App. 3d 480, 488.) Plainly, the trial court acted within its discretion in Granting the state's demurrer and motion to dismiss. .6

6 Because Lichtig did not file a:" late claim" Application with in the statutory period we do not address the merits of the application, e.g, whether Lichtig missed the deadline because of inadvertence of surprise

In addition, we find no error in the trial court's denial of the motion to set aside the dismissal. To prevail on that motion, Lichtig had to establish that, if he had received notice of the demurrer and the motion to dismiss, he might have saved his case from dismissal. (See Bethahmy v. Customcraft Industries, Inc. (1961) 192 Cal. App. 2d 308.310, Brooks v. Johnson (1898) 122 Cal. 569, 572.) He made no such showing.
Nor could he the complaint and the petition made clear that the action was barred by the Tort Claims act.

The trial court also acted within its discretion in denying the motion for reconsideration. That motion required Lichtig to demonstrate that his arguments against dismissal (e.g., estoppel to invoke to Tort Claims Act) was based on new or different facts of law that could not have been reasonable discovered at an earlier time. (See Baldwin v. Home Sav. Of America (1997)
1 Cal. App. 4th 1192,1197-1200.) Lichtig argued that the delay was justified by his in propria persona status. The law is to the contrary. (See People v. Pinholster (1992) 1 Cal 4th 865,958,fn. 18; Bianco v. California Highway Patrol (1994) 24 Cal. App. 4th 1113,1125-1126.) 7.

DISPOSITION

The order of dismissal is affirmed.
NOT TO BE PUBLISHED
MASTERSON.J.

We concur:

SPENCER. P.J.

ORTEGA. J.

7 Moreover the motion for reconsideration did not adequately explain the factual basis for the estoppel argument. The complaint and the petition alleged that the state had obtained "confidential information" that: "violations were concealed" and that the state concealed material facts." These allegations are too vague and conclusory to support an estoppel theory. (See Wells Fargo Bank v. Goldzband (1997) 53 Cal. App. 4th 596, 628 [listing the elements of estoppel]

Appendix A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION:I

DATE: March 31, 1999

Steven B. Lichtig
2821 Roscomare Road
Los Angeles CA. 90077

LICHTIG, STEVEN B.
Plaintiff and Appellant

v.

STATE OF CALIFORNIA
Defendant- Respondent

B122764
Los Angeles County NO. SCO49131

THE COURT:

Appellant's petition for rehearing and request for publication is denied.

Appendix B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE:01/21/98
HONERABLE DANIEL A. CURRY JUDGE
HONERABLE R.BROWN Deputy Sheriff
Dept.WEB
DEPUTY CLERK S.SHERWIN
REPORTER L. ANASTASIOU
1:30 pm SC049131

STEVEN BRADLEY LICHTIG Plaintiff Counsel
vs.
STATE OF CALIFORNIA Defendant Counsel
L. SERETAN (X)

NATURE OF PROCEEDINGS:
DEFT(STATE OF CA.) HRG ON DEMURRER TO COMPLAINT AND MOTN TO DISMISS

Demurrer is sustained without leave to amend. Time barred.

Motion to dismiss is granted.

Moving party to prepare dismissal.
29,1999, at 9:30 in room 203 is ordered vacated.

Appendix C
SUPREME COURT
FILED
MAY 19,1999
Robert Wandruff
Clerk

Second Appellate District, Division One, NO B122764
SO78017

IN THE SUPREME COURT OF CALIFORNIA

STEVEN B. L.ICHTIG, Appellant

V.

STATE OF CALIFORNIA et. al. Respondents

Appellant's petition for review DENIED.

GEORGE

Chief Justice